



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1201 ELM STREET, SUITE 500

DALLAS, TEXAS 75270

November 18, 2021

SENT BY ELECTRONIC MAIL – CONFIRM RECEIPT REQUESTED

gene@verataur.com

Gene Garber
Verataur, LLC.
602 Vortex Dr
New Iberia, LA 70560

Re: Stop Sale, Use or Removal Order
Federal Insecticide, Fungicide, and Rodenticide Act
In the Matter of Verataur, LLC.; EPA Docket No. FIFRA-06-2022-0400

Dear Mr. Garber:

Enclosed is a Stop Sale, Use, or Removal Order (SSURO or “the Order”) issued by the U.S. Environmental Protection Agency, Region 6, (EPA or “the Agency”) to Verataur, LLC. (Verataur) concerning BioErase Antimicrobial Surface Wipes (“the Product”). The SSURO directs Verataur, LLC., to immediately cease the sale, use or removal of the Product, unless written permission is provided by the EPA, *and is effective immediately upon receipt*.

Section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136k(a), authorizes the EPA to issue an order prohibiting the sale, use or removal of any pesticide by a person who owns, controls, or has custody of such pesticide whenever there is reason to believe on the basis of inspection or tests that the pesticide is in violation of any provision of FIFRA or has been or is intended to be distributed or sold in violation of FIFRA.

The EPA has reason to believe, based on inspections and documentation received from Verataur, that Verataur distributed or sold the Product with labeling that does not comply with the conditions required for minimum risk pesticides, which required the Product to be registered pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a. These distributions or sales of the Product are unlawful distributions or sales of an unregistered pesticide in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

The EPA also has reason to believe, based on inspections of labeling with false or misleading statements that accompanied the Product when it was distributed or sold, that Verataur has been unlawfully distributing or selling a misbranded pesticide in violation of section 12(a)(1)(E), 7 U.S.C. § 136j(a)(1)(E).

Addressing noncompliance with environmental laws is important in carrying out the EPA’s mission to protect human health and the environment. At the same time, the EPA acknowledges that the COVID-pandemic may impact Verataur, LLC. If that is the case, please contact us regarding any specific issues you need to discuss.

MAVERICK002639

The issuance of this Order shall not act as a waiver by EPA of any enforcement or other authority available to EPA under federal law, including EPA's authority to seek civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for the violations alleged in this Order or any other violation.

Thank you for your attention to this matter. If you have any questions, please contact Lawrence Pittman, at pittman.lawrence@epa.gov or (214) 665-8381, or Lee McMillan, of my staff, at mcmillan.lee@epa.gov or (214) 665-6404.

Sincerely,



Digitally signed by CHERYL SEAGER
DN: c=US, o=U.S. Government, ou=Environmental Protection
Agency, cn=CHERYL SEAGER,
0.9.2342.19200300.100.1.1=66001003651793
Date: 2021.11.18 17:17:46 -0600

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

Attachment: Stop, Sale, Use or Removal Order

MAVERICK002640

FILED

21 NOV 22 AM 9:48

U. S. ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1201 Elm Street, Suite 500
Dallas, Texas 75270

REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of

Verataur, LLC,

Respondent.

§
§
§
§
§

Docket No. FIFRA-06-2022-0400

STOP SALE, USE, OR REMOVAL ORDER

Jurisdiction

1. This Stop Sale, Use, or Removal Order (Order or SSURO) is issued pursuant to the authority of Section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA or “the Act”), 7 U.S.C. § 136k(a), as amended. Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), authorizes the Administrator of the U.S. Environmental Protection Agency (“EPA”) to issue an order prohibiting the sale, use, or removal of any pesticide or device by any person who owns, controls, or has custody of such pesticide or device whenever there is reason to believe that the pesticide or device is in violation of any provision of FIFRA, or the pesticide or device has been or is intended to be distributed or sold in violation of any provision of FIFRA.

2. The authority to issue this SSURO has been delegated to the Director, Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 6, by EPA Region 6 Delegation No. R6-5-12 dated June 14, 2017.

Parties

3. Complainant is the Director of Enforcement and Compliance Assurance Division of the EPA, Region 6, as duly delegated by the Administrator of the EPA and the Regional Administrator, EPA, Region 6.

MAVERICK002641

4. Respondent is Verataur, LLC, a company incorporated in the state of Louisiana and conducting business in the state of Louisiana.

Statutory and Regulatory Authority

5. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), provides that “no person in any State may distribute or sell to any person any pesticide that is not registered under this subchapter.”

6. Section 25(b) of FIFRA, 7 U.S.C. § 136w(b), states that the Administrator may exempt from the requirements of FIFRA by regulation any pesticide which the Administrator determines either (1) to be adequately regulated by another Federal agency, or (2) to be of a character which is unnecessary to be subject to this Act in order to carry out the purposes of this Act.

7. Pursuant to the regulation at 40 C.F.R. § 152.15, in relevant part, no person may distribute or sell any pesticide product that is not registered under the Act, except as provided in 40 C.F.R. §§ 152.20, 152.25, and 152.30. A pesticide is any substance (or mixture of substances) intended for a pesticidal purpose, i.e., use for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant regulator, defoliant, or desiccant. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance (either by itself or in combination with any other substance) can or should be used as a pesticide.

8. Pursuant to the regulation at 40 C.F.R. § 152.25, the pesticides or classes of pesticides listed in 40 C.F.R. Section 152.25 have been determined to be of a character not requiring regulation under FIFRA and are therefore exempt from all provisions of FIFRA when intended for use, and used, only in the manner specified.

9. The regulation at 40 C.F.R. § 152.25(f) identifies the conditions necessary to exempt “minimum risk” pesticides from FIFRA. Specifically, the products must:
- 1) contain only the active ingredients that are listed in 40 C.F.R. § 152.25(f)(1);
 - 2) include only inert ingredients listed paragraphs (f)(2)(i) through (iv) of the section (see 40 C.F.R. § 152.25(f)(2));
 - (3) bear a label identifying the name and percentage (by weight) of each active ingredient and the name of each inert ingredient (see 40 C.F.R. § 152.25(f)(3)(i));
 - (4) not bear claims either to control or mitigate microorganisms that pose a threat to human health, including claim to control insects carrying specific diseases (see 40 C.F.R. § 152.25(f)(3)(ii));
 - (5) bear a label with the company name and contact information (see 40 C.F.R. § 152.25(f)(3)(iii)), and
 - (6) not include any false and misleading statements, including those listed in 40 C.F.R. § 156.10(a)(5)(i) through (viii) (see 40 C.F.R. § 152.25(f)(3)(iv)).
10. If any of the conditions specified in Paragraph 9 above are not satisfied, the pesticide must be registered pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.
11. Pursuant to the regulation at 40 C.F.R. § 152.25(f)(3)(ii), for a product to be exempted under 40 C.F.R. § 152.25, the product must not bear claims either to control or mitigate microorganisms that pose a threat to human health, including but not limited to disease transmitting bacteria or viruses, or claims to control insects or rodents carrying specific diseases, including, but not limited to ticks that carry Lyme disease.

12. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), provides that it is unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

13. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. 136j(a)(1)(E), provides that it is unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.

14. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states, *inter alia*, that a pesticide is misbranded if its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

15. Pursuant to the regulation at 40 C.F.R. § 156.10(a)(5), false and misleading statements that can cause a pesticide to be misbranded include, *inter alia*:

- a. A false or misleading statement concerning the effectiveness of the pesticide or device (40 C.F.R. § 156.10(a)(5)(ii));
- b. A false or misleading comparison with other pesticides or devices (40 C.F.R. § 156.10(a)(5)(iv);
- c. Any statement directly or indirectly implying that the pesticide or device is recommended or endorsed by any agency of the federal government (40 C.F.R. § 156.10(a)(5)(v)); or
- d. Claims as to the safety of the pesticide or its ingredients, including statements such as “safe,” “nonpoisonous,” “noninjurious,” “harmless” or “nontoxic to humans and pets” with or without such a qualifying phrase as “when used as directed” (40 C.F.R. § 156.10(a)(5)(ix)).

16. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

17. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “to distribute or sell” as to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.

18. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines “pesticide” as, *inter alia*, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

19. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines “pest” as: (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).

20. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines “label” as the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

EPA Findings of Fact and Conclusions of Law

21. Respondent is, and at all times referred to herein was, a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

22. This Order refers to Verataur and all its divisions, offices, and subsidiaries collectively as “Respondent.”

23. Respondent manufactures and distributes a product called “BioErase Antimicrobial Surface Wipes” (“the Product”) for use as a broad-spectrum antimicrobial cleaner.

24. The Product is a “pesticide” as that term is defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), because it is a substance intended for preventing, destroying, repelling, or mitigating pests, i.e. viruses, bacteria, and fungi.

25. The Product is a “pesticide” as that term is further defined by 40 C.F.R. § 152.15(a)(1), which requires registration pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, because it is a substance intended for pesticidal purposes for which Respondent stated by labeling when distributing and selling the Product that the Product can or should be used as a pesticide, i.e. “BioErase is a broad-spectrum antimicrobial cleaner. Antimicrobial products kill or slow the spread of microorganisms. Microorganisms include bacteria, viruses, protozoans, and fungi.”

26. At the time the Product was distributed or sold by Respondent, the Product was not registered pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

27. Respondent claims the Product is a minimum risk pesticide, that is exempt from FIFRA regulation and registration pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

28. Pursuant to the regulation at 40 C.F.R. § 152.25(f)(3), for a product to be a minimum risk pesticide exempted from FIFRA under 40 C.F.R. § 152.25, the Product must meet the required conditions.

29. The Product label bears claims that are not permitted under the conditions required for a product to be a minimum risk pesticide exempted from FIFRA regulation.

30. As referenced in Paragraph 9, pursuant to 40 C.F.R. § 152.25(f)(3)(ii), the product must not bear claims either to control or mitigate microorganisms that pose a threat to human

health, including but not limited to disease transmitting bacteria or viruses, or claims to control insects or rodents carrying specific diseases, including, but not limited to ticks that carry Lyme disease.

31. Labeling for the Product states, that the Product “Bioerase is a broad-spectrum antimicrobial cleaner. Antimicrobial products kill or slow the spread of microorganisms. Microorganisms include bacteria, viruses, protozoans, and fungi.”

32. The Product label claims referenced in Paragraph 31, are not permitted as the conditions for minimum risk pesticides do not allow for claims that control or mitigate microorganisms that pose a threat to human health, including but not limited to disease transmitting bacteria or viruses.

33. The Product does not comply with the conditions required for minimum risk pesticides, violating 40 C.F.R. § 152.25(f)(3).

34. Because the Product does not comply with the conditions required for minimum risk pesticides, the Product is not a minimum risk pesticide. The Product must be registered pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, and the distribution or sale of the unregistered Product was unlawful under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136(j)(1)(A).

35. Labeling for the Product states that the Product is an “EPA Exempted Product. This product is exempt from EPA Registration under minimal risks pesticides exemption FIFRA Section 25b.”

36. As aforementioned, the Product does not comply with the conditions required for minimum risk pesticides, thus is not a minimum risk pesticide and is not exempt from EPA Registration under minimum risks pesticides exemption FIFRA Section 25b.

37. The claim referenced in Paragraph 35 is a false or misleading statement and representation as defined under 40 C.F.R. § 156.10(a)(5), indicating that the Product was misbranded as defined by Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A) and the distribution or sale of the Product unlawful under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136(j)(1)(E).

38. On or about September 2020, the EPA conducted an investigation of Respondent's compliance with FIFRA and the federal regulations promulgated thereunder (the "Investigation"). As part of the Investigation, the EPA requested, and Respondent provided documentation and information concerning Respondent's distribution of pesticidal products.

39. Beginning on or about June 14, 2020, Respondent distributed or sold the Product.

Basis for the Order

40. EPA has reason to believe, based on the information described in the EPA Findings of Fact and Conclusions of Law, that the Respondent distributed or sold the Product in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

41. EPA has reason to believe, based on the information described in the EPA Findings of Fact and Conclusions of Law, that the Respondent distributed or sold the Product in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. 136j(a)(1)(E).

Order

42. Pursuant to the authority of Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), Respondent is hereby ORDERED to **immediately cease** the sale, use, or removal of the Product under its ownership, control, or custody, wherever such products are located, except in accordance with the provisions of this Order, or until such time that the Product is in compliance with FIFRA.

43. This Order shall apply to all quantities and container types and sizes of all of the Product controlled or within the custody of Respondent and any agent, contractor, employee, consultant, firm successor, assign or other persons or entities acting on behalf of Respondent, and any BioErase Antimicrobial Surface Wipes stocks returned to Verataur from its customers or other end-users.

44. The Product shall not be used, sold, offered for sale, held for sale, shipped, delivered for shipment, received, or having so received, shall not be delivered, offered for delivery, moved, or removed for disposal from any facility or establishment, for any reason, unless approved by EPA in writing, or until such time that the Product is in compliance with FIFRA.

45. Any proposal for movement of the Product shall be submitted to Lee McMillan at mcmillan.lee@epa.gov and shall include:

- a. The purpose for which movement is being requested;
- b. An accounting of the quantities of Product to be moved, including location(s) and container size, and
- c. The destination location to which the Product will be moved.

General Provisions

46. Section 12(a)(2)(I) of FIFRA, 7 U.S.C. § 136j(a)(2)(I), provides that it is unlawful for any person to violate any order issued under Section 13 of FIFRA, 7 U.S.C. § 136k.

47. Violation of the terms or provisions of this Order may subject the violator to **CIVIL OR CRIMINAL PENALTIES** as prescribed in Section 14 of FIFRA, 7 U.S.C. § 136l.

48. Respondent may seek federal judicial review of the Order pursuant to Section 16 of FIFRA, 7 U.S.C. § 136n.

49. If any provision or authority of the Order or the application of the Order to Respondent is held by federal judicial authority to be invalid, the application to Respondent of the remainder of the Order shall remain in full force and effect and shall not be affected by such a holding.

50. The issuance of this Order shall not act as a waiver by the EPA of any enforcement or other authority available to the EPA under FIFRA.

51. This order does not affect the obligation of Respondent to comply with all federal, state, and local statutes, regulations and permits.

52. This Order shall be **EFFECTIVE IMMEDIATELY** upon receipt by Respondent.

53. This Order shall remain in effect unless and until revoked, terminated, suspended, modified, or released by the EPA.

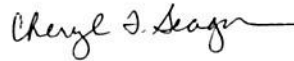
54. EPA may subsequently amend this Order, in writing, in accordance with the authority of FIFRA. Any amendment will be transmitted to Respondent. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified in the original Order.

55. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

Other Matters

56. For any additional information about this Stop Sale, Use or Removal Order please contact Lee McMillan, EPA Region 6 Waste Enforcement Branch, at (214) 665-6404 or mcmillan.lee@epa.gov. For any legal matters concerning this Order, you are encouraged to

contact Lawrence Pittman, Office of Regional Counsel, at (214) 665-8381 or
pittman.lawrence@epa.gov.



Digitally signed by CHERYL SEAGER
DN: c=US, o=U.S. Government, ou=Environmental
Protection Agency, cn=CHERYL SEAGER,
0 9 2342.19200300.100.1.1+68001003651793
Date: 2021.11.18 17:14:32 -06'00'

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Stop Sale, Use, and Removal Order was sent this day in the following manner:

Transmitted via electronic mail to Respondent's representatives:

Gene Garber
Verataur, LLC.
gene@verataur.com

Pittman, Lawrence

Digitally signed by Pittman, Lawrence
DN: cn=Pittman, Lawrence,
email=Pittman.Lawrence@epa.gov
Date: 2021.11.22 09:29:14 -06'00'

Signed
Office of Regional Counsel
U.S. EPA, Region 6